

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 96-0244
Retail Sales, Motor Fuel Dealer, and Income Tax
For The Tax Periods: 1989 through 1995**

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ISSUES

I. Tax Administration – Delay in Assessment

Authority: IC 6-8.1-5-2.

The Taxpayer protests the delay in the Department's tax liability assessments.

II. Tax Administration – Amount of Assessments

Authority: IC 6-8.1-5-1.

The Taxpayer protests the amounts of the assessments.

III. Tax Administration – Jeopardy Assessments

Authority: : IC 6-8.1-5-3.

The Taxpayer protests the Department's propriety of the Department's use of the jeopardy assessments.

IV. **Tax Administration – Chain of Custody**

Authority: IC 6-8.1-5-1.

The Taxpayer protests the Department's ability to produce a sufficient chain of custody for the double set of books.

STATEMENT OF FACTS

The Taxpayer owned a truck stop in Indiana. After an investigation by the Department, the Taxpayer was assessed Income, Retail Sales, and Motor Fuel Dealer's tax for filing fraudulent returns based on a duplicate set of books. The Taxpayer no longer resides in the country and relies on previously submitted correspondence for resolving the protest. More facts will be provided as necessary.

I. **Tax Administration: Delay of Assessments**

DISCUSSION

The Taxpayer argues that the Department may be barred from assessing the Taxpayer because the Statute of Limitations have run. However, IC 6-8.1-5-2 (c) states: "if a person files a fraudulent, unsigned, or substantially blank return, or if a person does not file a return, there is no time limit within which the department must issue its proposed assessment." In this case, the Taxpayer was assessed for filing fraudulent returns. Therefore, there is no statute of limitations for these assessments.

Also, the Taxpayer contends that the Department's delay in making these assessments have prejudiced the Taxpayer's Due Process Rights. However, the Taxpayer does not explain how these assessments violate his rights. In any event, an Administrative Hearing is not the proper forum to make those determinations and the Department presumes the constitutionality of IC 6-8.1-5-2 to be valid. Therefore, the Department finds that the Taxpayer's Due Process rights were not violated and the protest is denied.

FINDING

The Taxpayer's protest is denied.

II. **Tax Administration – Amount of Assessments**

DISCUSSION

The Taxpayer protests the basis of the assessments as well as the amounts of the assessments. However, although the Taxpayer alleges that the liabilities are erroneous, they provide no evidence of this. Pursuant to IC 6-8.1-5-1: "[t]he notice of proposed assessment is prima facie

evidence that the department's claim for the unpaid tax is valid, and the burden of proving that the proposed assessment is wrong rests the person against whom the proposed assessment is made." Thus, the protest must be denied.

FINDING

The Taxpayer's protest is denied.

III. Tax Administration – Jeopardy Assessments

DISCUSSION

The Taxpayer protests the Department's use of the Jeopardy Assessments in this case. Pursuant to IC 6-8.1-5-4:

If at any time the department finds that a person owing taxes intends to quickly leave the state, remove his property from the state, conceal his property in the state, or do any other act that would jeopardize the collection of those taxes, the department may declare the person's tax period at an end, may immediately make an assessment for the taxes owing, and may demand immediate payment of the amount due, without providing the notice required in IC 6-8.1-8-2. If the payment is not made immediately, the department may issue or request the state police department to serve a jeopardy tax warrant against the person and, either without or with the assistance of the sheriffs of any counties in the state, may levy on and sell the person's property which is located in those counties. In place of the levy and sale procedure, the department may accept from the person a bond for the payment of the taxes, if the bond is in an amount at least equal to the amount of the total liability and if the bond is through a surety acceptable to the department.

In this case, the Department issued the Jeopardy Assessments after it was learned that the Taxpayer fled the country. Therefore, the Department was justified in its assessments.

FINDING

The Taxpayer's protest is denied

V. Tax Administration – Chain of Custody

DISCUSSION

The Taxpayer protests that the Department cannot lay a sufficient chain of custody foundation to admit into evidence the "double set of books" upon which the assessments were made. However, pursuant to IC 6-8.1-5-1, the Taxpayer has the burden of showing the liabilities are erroneous. Here, the Taxpayer has not met that burden. The Taxpayer also alleges that the

Department violated the Taxpayer's Due Process rights by not allowing him access to his records once they were taken pursuant to the search warrant. Yet, these records were turned over to the Federal Government in response to a grand jury investigation. In any event, a Departmental hearing is not the proper forum to address those issues.

FINDING

The Taxpayer's protest is denied.